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November 16, 2015

Hon. Andrew J. Peck
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: Rio Tinto v. Vale et al, Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

We write briefly to update the Court on two issues in advance of tomorrow's conference.

First, Rio Tinto will produce the communications with Livingstone pursuant to a Rule 502(d) Order. *See* November 12, 2015 Joint Letter (Dkt No. 398) at 7-8 and 12. Rio Tinto continues to maintain its privilege claims over communications with Messrs. Landau, Fujihara and Aeneas/Toure, all consultants engaged by outside counsel for purposes of providing legal advice related to and evaluating this potential litigation – and therefore subject to the protections of Federal Rule of Civil Procedure 26(b)(4)(D). *Id.* at 9-11.

Second, it has become necessary to clarify and complete the record on the comprehensiveness of Rio Tinto's and Vale's Rule 26(g) investigations. From its Rule 26(g) investigation, Rio Tinto identified, collected and produced documents from 27 custodians (including three lawyers responsible for Simandou), and across all relevant Rio Tinto corporate files and electronic document repositories, including shared drives, hard copy repositories, and other electronic document storage systems utilized by Rio Tinto. As a result, Rio Tinto has now produced or logged over 200,000 documents in response to Vale's requests, including *more than 6,000 documents* relating to Rio Tinto's investigation and contemplated legal actions alone.

Vale's Rule 26(g) investigation, in contrast, apparently did not identify that Vale had failed to retain documents from eight of the custodians that it had agreed to produce from. When Vale finally disclosed this to the Court and Rio Tinto, the result was that, despite previously agreeing to produce from 24 custodians, Vale in fact was producing from only 16 custodians. As a result, Vale has produced or logged less than 25,000 documents total.

Very truly yours,

/s/Michael Lyle
Michael Lyle

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